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wherein said first portion of said bottom portion is adapted to be, after installation of said apparatus to said protrusion, pulled toward and over said second portion of said bottom portion and sealed thereto; and

wherein said base flap is adapted to be thereafter welded over a seam created by the overlap of said first and second portions of said base portion.

### REMARKS/ARGUMENTS

#### Rejection of Claims 1-2 Under 35 U.S.C. § 112

The Examiner rejected claims 1-2 under 35 U.S.C. § 112 as being indefinite for using the language "may be". Claim 1 has been amended to more clearly define the subject matter recited therein. Claim 2 has been cancelled. As such, the Applicant respectfully submits that the language of claims 1-2 is now definite, and the Examiner's rejection may be properly withdrawn.

#### Rejection of Claims 1-2, 5-7, and 10 Under 35 U.S.C. § 102(b)

The Examiner rejected claims 1-2, 5-7, and 10 under 35 U.S.C. § 102(b) as being anticipated by Hatmaker (US 3,871,145). As the Applicant does not believe Hatmaker to teach the subject matter of the rejected claims, the rejection is respectfully traversed.

Hatmaker teaches a flashing unit constructed from a unitary piece of material, such as, for example, sheet metal. The flashing unit is designed to have a first portion that fits around the support leg of a piece of equipment, and a second portion that fits partially over a pitch box that lies between the bottom of the support leg and the surface

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to which the equipment is mounted. The first portion is supplied with a barbed fastening strip that is provided to help secure the first portion in position on the equipment leg. The second portion is of a specific size and shape, as determined by the size and shape of the individual sections that are cut into the unitary piece of material and thereafter folded together to form the second portion. When folded together, the first portion of the flashing forms a hollow cylinder, with the second portion forming a trapezoid that extends downward therefrom. The size of the opening at the top of the first portion is adapted to be secured to the equipment leg with a fastening band. The actual size of the openings in the top of the first portion, at the intersection of the first and second portion, and at the bottom of the second portion, appear to be fixed. The only way the size of the opening at the bottom of the second portion can be adjusted is by trimming away a portion of the flashing material. (See column 2, lines 45-48). Additionally, for reasons described in more detail below, the Applicant also does not believe that the fastening band can materially affect the size of the top opening in the first portion of the flashing.

In contrast, the apparatus of the present invention is designed to fit protrusions of various size, without the need to trim or otherwise remove a portion of the apparatus material to achieve a proper fit. As can be best observed in Figures 6-7, the apparatus of the present invention is provided with a top portion and a base portion that are split. One edge along the split on each of the top portion and bottom portion is also designed to overlap the edge on the opposite side of the split after the apparatus is installed to a protrusion. Because both the top portion and bottom portion of the apparatus of the present invention are adjustable, the apparatus can be effectively wrapped around

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protrusions of various shape and size, while still forming an adequate seal thereto. The overlapping of the base portion and top portion assures that there will be an adequate seal.

Hatmaker does not teach such an apparatus. The flashing of Hatmaker is essentially non-adjustable. The second portion of the flashing in Hatmaker is of a size predetermined by the size of the folded cutouts from which it is produced. The size of the bottom opening in the second portion of the flashing may only be adjusted by cutting away excess material. The size of the top opening in the second portion (i.e., at the intersection of the first and second portions) is also fixed, as determined by the size of the rectangular section of the material blank that forms the first portion (i.e., split collar) of the folded flashing. Thus, only the top opening in the split collar could possibly be adjustable - and, the Applicant respectfully submits that is also likely not so.

However, even if the top opening in the split collar is considered to be adjustable in size, the Applicant respectfully submits that Hatmaker still does not teach the present invention. This is so because even if the fastening band in Hatmaker were able to reduce the size of the top opening, it is still not possible to correspondingly reduce the size of the opening at the intersection of the first and second portions of the flashing, or the opening in the bottom of the second portion of the flashing. Thus, the result of a drawing in of the fastening band would be a buckling and wrinkling of the material at the top opening (because the remainder of the flashing material cannot move in a corresponding manner). Such a buckling and wrinkling of the material at the top opening is problematic because it will tend to cause gaps through which water can leak

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into the flashing, and because it will cause a misalignment of the seam that runs fully down one side of the flashing - leading to further leaks.

The apparatus of the present invention avoids this problem by allowing both the top and bottom portions to move in a corresponding manner, and by providing an overlapping seam which ensures that water will not penetrate the apparatus despite the size of the protrusion to which the apparatus is installed. Consequently, the Applicant respectfully submits that Hatmaker does not teach the subject matter of the rejected claims because: (1) Hatmaker does not teach a flashing of adjustable size but, rather, the fastening band is only provided to secure the flashing to the equipment leg; (2) even if the fastening band were able to reduce the size of the top opening, the remainder of the flashing is not adjustable in size and, thus, a reduction in the size of the top opening would lead to leaks; (3) the bottom portion of the flashing is not adapted for sealing to a roof; and (4) the folded sections of material that form the bottom portion of the flashing have abutting, not overlapping edges, thereby increasing the likelihood that water could enter the flashing after installation. Therefore, the Applicant respectfully submits that Hatmaker cannot support a rejection of claims 1-2, 5-7, and 10 under 35 U.S.C.

§ 102(b).

Rejection of Claims 3-4, 9, and 11-12 Under 35 U.S.C. § 103(a)

The Examiner rejected claims 3-4, 9, and 11-12 under 35 U.S.C. § 103(a) as being unpatentable over Hatmaker in view of Gentry (US 4,625,469). As the Applicant does not believe Hatmaker to teach the subject matter of the rejected claims, the rejection is respectfully traversed.

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The Applicant has amended independent claims 1 and 11 to more clearly describe the subject matter recited therein. The Applicant has distinguished, above, the subject matter of the present invention from the teachings of Hatmaker. In addition, the Applicant respectfully submits that Hatmaker in view of Gentry fails to teach the subject matter of the rejected claims. Even if Hatmaker is combined with Gentry, the combined teachings fail to disclose an adjustable sealing apparatus that may be used to cover and seal roof projections of various size. As discussed above, Hatmaker does not teach such a flashing - nor does Hatmaker in view of Gentry. Additionally, Hatmaker in view of Gentry does not appear to teach the use of a base flap for covering the seam in a base portion of a roof protrusion covering apparatus after installation. Because the base portion of the apparatus of the present invention will have the most exposure to water after installation, the base flap provides extra protection against leakage by further covering the seam created by the joining of the two halves of the base portion. Hatmaker in view of Gentry appears to be entirely devoid of such a teaching or suggestion. As such, the Applicant respectfully submits that Hatmaker in view of Gentry cannot support a rejection of claims 3-4, 9-11 and 12 under 35 U.S.C. § 103(a).

### CONCLUSION

The Applicant has canceled claim 2, and amended independent claims 1 and 11 to more clearly describe the subject matter recited therein. The Applicant has further distinguished the present invention from the teachings of the references cited as prior art by the Examiner. As a result of the amendments, claims 1, and 3-12 remain pending in the present application.

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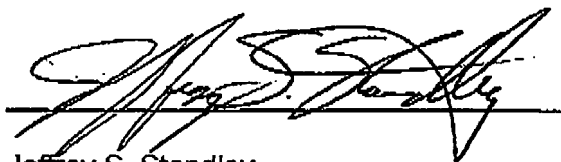
Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is captioned "Version With Markings To Show Changes Made."

Therefore, the Applicant respectfully submits that the present application is now in condition for allowance, and such action is earnestly requested.

Respectfully submitted,

Date: \_\_\_\_\_

By: \_\_\_\_\_



Jeffrey S. Standley  
Registration No. 34,021  
Standley & Gilcrest LLP  
495 Metro Place South  
Suite 210  
Dublin, Ohio 43017-5319  
Telephone: (614) 792-5555  
Facsimile: (614) 792-5536  
E-mail: jstandley@standleyandgilcrest.com

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